

MEMORANDUM

To: All Wholesalers
From: Phillip H. Wayt
Executive Director
Washington Beer & Wine Wholesalers Association
PO Box 1319
Olympia, Washington 98507-1319

(360) 352-5252
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Subject: Price Postings

Date: May 19, 1995

During this legislative session we were advised by the Washington State Liquor Control Board (though their Assistant Attorney General) that the Board anticipated being named as a defendant in a lawsuit on "price postings" brought by a retailer. That retailer (and wholesaler, importer and winery) was Peter Dow of Cafe Juanita in Kirkland. He also has the Cavatappi Winery. We, and the Board, anticipated that such a suit would seek to invalidate the current price posting regulations as well as current law that puts in place the system we have now.

The Board felt defending current regulations in such a suit would be expensive and time consuming. Although our Association counsel, Bob Baronsky felt our price posting system in Washington is significantly different from all others and very defensible, the Board was unsure.

In a meeting called by the Board with Bob Baronsky and I, the Board brought up the possibility of taking current posting regulations and adding them to statute (law). We agreed there was a long-shot possibility of doing so by adding sections to another (pre-existing) Liquor Board bill currently being considered by the Legislature.

Bob and I presented this opportunity to your Executive Committee in Olympia March 22, 1995 for consideration. Following extensive review and discussion by the Executive Committee, myself, Bob Baronsky and Dick Ducharme, your Executive Committee motion and direction was as follows:

"Because adding existing price posting regulations to law is consistent with existing Association position supporting price postings, we support the Washington State Liquor Board's action to add existing price posting WAC's (regulations) to statute, if, in the judgement of Phil Wayt and Dick Ducharme eventual passage and enactment into law is possible."

(OVER)

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	134

EXHIBIT NO. 252 Date 8/1/05
Deposition of Phillip Wayt
CONNIE CHURCH, Court Reporter

WBW-04461

WBW_103330

We knew full well that although the Board would support this effort, Dick and I would have to do most of the work on the hill to obtain passage. We also knew that if we tried this and lost we might be in a weaker position than is currently the case. Because this was a sensitive subject and potential success would involve sensitive political maneuvering, we decided to try to get this job done quietly and without raising too much fuss about the subject.

During the process, Peter Dow was somehow informed of our (and the Board's) action and showed up in Olympia trying to hire several different lobbyists to defeat our effort. He was unsuccessful in his attempt to hire representation.

After meeting again with the Board, agreement was reached on the enclosed language. New language that Bob Baronsky and I drafted is labeled "new" on the enclosed copy. I think you will find the "Intent" section quite interesting. It leaves no doubt that postings are state policy.

The enclosure is only part of HB 1060. Part of the bill which did not have anything to do with us was vetoed by the Governor. At any rate, the bill finally passed the legislature and was signed by the Governor May 5, 1995. It becomes law July 23, 1995.

As you will see, the language now in law does not contain actual posting dates. This remains "as is" in current regulations. Also, as you will see in line 13, on page 15, Quantity Discounts are now prohibited by law. Also, your (and your supplier's) minimum markup is now in law. Bob felt adding the section on Board review of the markup percentage also makes it even more defensible in court. It's comforting to have other sections of existing regulations in law as well. Please review the enclosed language.

At least for the foreseeable future, this should put to rest any doubt as to the future of postings. This should (and we hope) encourage those of you who are not utilizing the electronic posting process to do so. If you have any questions, please let me know. We'll review this in more detail at our Summer meeting. Also, I'll be around for district meetings the week of June 5 and 12.

WBW-04462

WBW_103331



CERTIFICATION OF ENROLLMENT

HOUSE BILL 1060

Chapter 232, Laws of 1995

PARTIAL VETO

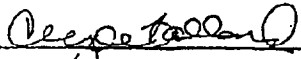
54th Legislature
1995 Regular Session

EFFECTIVE DATE: July 23, 1995

Passed by the House April 12, 1995
Yeas 93 Nays 0

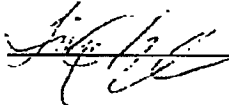
CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 1060 as passed by the House of Representatives and the Senate on the dates hereon set forth.

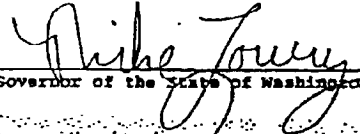

Speaker of the
House of Representatives

Passed by the Senate April 12, 1995
Yeas 47 Nays 0


President of the Senate


Chief Clerk

Approved May 5, 1995, with
the exception of section 8,
which is vetoed.


Governor of the State of Washington

FILED

MAY 5 - 1995

Time 10:02 am

Secretary of State
State of Washington

WBW-04463

WBW_103332

1 board.)) An annual class I license may be issued to the holder of a
2 class A, C, D, or public H license upon proper application to the board
3 and payment of a fee of three hundred fifty dollars.

4 (2) The holder of a class I license shall, if requested by the
5 board, notify the board or its designee of the date, time, place, and
6 location of any catered event. Upon request the class I licensee shall
7 provide to the board all necessary or requested information concerning
8 the society or organization which will be holding the function at which
9 the class I license will be utilized.

10 (3) If attendance at the function will be open to the general
11 public, the society or organization sponsoring the function shall be
12 within the definition of "society or organization" in RCW 66.24.375.
13 If attendance at the function will be limited to members and invited
14 guests of the sponsoring society or organization, then the requirement
15 that the society or organization be within the definition of RCW
16 66.24.375 is waived.

17 Sec. 10. RCW 66.28.180 and 1985 c 226 s 4 are each amended to read
18 as follows:

19 It is unlawful for a person, firm, or corporation holding a
20 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer
21 wholesaler's license, a brewer's license, a beer importer's license, a
22 domestic winery license, a wine importer's license, or a wine
23 wholesaler's license within the state of Washington to modify any
24 prices without prior notification to and approval of the board.

25 (1) Intent. This section is enacted, pursuant to the authority of
26 this state under the twenty-first amendment to the United States
27 Constitution, to promote the public's interest in fostering the orderly
28 and responsible distribution of malt beverages and wine towards
29 effective control of consumption; to promote the fair and efficient
30 three-tier system of distribution of such beverages; and to confirm
31 existing board rules as the clear expression of state policy to
32 regulate the manner of selling and pricing of wine and malt beverages
33 by licensed suppliers and wholesalers.

34 (2) Beer and wine wholesale price posting. (a) Every beer or wine
35 wholesaler shall file with the board at its office in Olympia a price
36 posting showing the wholesale prices at which any and all brands of
37 beer and wine sold by such beer and/or wine wholesaler shall be sold to
38 retailers within the state.

1 (b) Each price posting shall be made on a form prepared and
2 furnished by the board, or a reasonable facsimile thereof, and shall
3 set forth:

4 (i) All brands, types, packages, and containers of beer offered for
5 sale by such beer and/or wine wholesaler:

6 (ii) The wholesale prices thereof to retail licensees, including
7 allowances, if any, for returned empty containers,

8 (c) No beer and/or wine wholesaler may sell or offer to sell any
9 package or container of beer or wine to any retail licensee at a price
10 differing from the price for such package or container as shown in the
11 price posting filed by the beer and/or wine wholesaler and then in
12 effect, according to rules adopted by the board,

13 (d) Quantity discounts are prohibited. No price may be posted that
14 is below acquisition cost plus ten percent of acquisition cost.
15 However, the board is empowered to review periodically, as it may deem
16 appropriate, the amount of the percentage of acquisition cost as a
17 minimum mark-up over cost and to modify such percentage by rule of the
18 board, except such percentage shall be not less than ten percent.

NEW

19 (e) Wholesale prices on a "close-out" item shall be accepted by the
20 board if the item to be discontinued has been listed on the state
21 market for a period of at least six months, and upon the further
22 condition that the wholesaler who posts such a close-out price shall
23 not restock the item for a period of one year following the first
24 effective date of such close-out price.

25 (f) The board may reject any price posting that it deems to be in
26 violation of this section or any rule, or portion thereof, or that
27 would tend to disrupt the orderly sale and distribution of beer and
28 wine. Whenever the board rejects any posting, the licensee submitting
29 the posting may be heard by the board and shall have the burden of
30 showing that the posting is not in violation of this section or a rule
31 or does not tend to disrupt the orderly sale and distribution of beer
32 and wine. If the posting is accepted, it shall become effective at the
33 time fixed by the board. If the posting is rejected, the last
34 effective posting shall remain in effect until such time as an amended
35 posting is filed and approved, in accordance with the provisions of
36 this section.

37 (g) All price postings filed as required by this section shall at
38 all times be open to inspection to all trade buyers within the state of
39 Washington and shall not in any sense be considered confidential.

1 (h) Any beer and/or wine wholesaler or employee authorized by the
2 wholesaler-employer may sell beer and/or wine at the wholesaler's
3 posted prices to any class A, B, C, D, E, F, H, G, or J licensee upon
4 presentation to the wholesaler or employee at the time of purchase of
5 a special permit issued by the board to such licensee.

6 (i) Every class A, B, C, D, E, F, H, G, or J licensee, upon
7 purchasing any beer and/or wine from a wholesaler, shall immediately
8 cause such beer or wine to be delivered to the licensed premises, and
9 the licensee shall not thereafter permit such beer to be disposed of in
10 any manner except as authorized by the license.

11 (ii) Beer and wine sold as provided in this section shall be
12 delivered by the wholesaler or an authorized employee either to the
13 retailer's licensed premises or directly to the retailer at the
14 wholesaler's licensed premises. A wholesaler's prices to retail
15 licensees shall be the same at both such places of delivery.

16 (3) Beer and wine suppliers' price filings, contracts, and
17 memoranda. (a) Every brewery and winery offering beer and/or wine for
18 sale within the state shall file with the board at its office in
19 Olympia a copy of every written contract and a memorandum of every oral
20 agreement which such brewery or winery may have with any beer or wine
21 wholesaler, which contracts or memoranda shall contain a schedule of
22 prices charged to wholesalers for all items and all terms of sale,
23 including all regular and special discounts; all advertising, sales and
24 trade allowances, and incentive programs; and all commissions, bonuses
25 or gifts, and any and all other discounts or allowances. Whenever
26 changed or modified, such revised contracts or memoranda shall
27 forthwith be filed with the board as provided for by rule. The
28 provisions of this section also apply to certificate of approval
29 holders, beer and/or wine importers, and beer and/or wine wholesalers
30 who sell to other beer and/or wine wholesalers.

31 Each price schedule shall be made on a form prepared and furnished
32 by the board, or a reasonable facsimile thereof, and shall set forth
33 all brands, types, packages, and containers of beer or wine offered for
34 sale by such licensed brewery or winery; all additional information
35 required may be filed as a supplement to the price schedule forms.

36 (b) Prices filed by a brewery or winery shall be uniform prices to
37 all wholesalers on a state-wide basis less bona fide allowances for
38 freight differentials. Quantity discounts are prohibited. No price
39 shall be filed that is below acquisition/production cost plus ten

1 percent of that cost, except that acquisition cost plus ten percent of
2 acquisition cost does not apply to sales of beer or wine between a beer
3 or wine importer who sells beer or wine to another beer or wine
4 importer or to a beer or wine wholesaler, or to a beer or wine
5 wholesaler who sells beer or wine to another beer or wine wholesaler.
6 However, the board is empowered to review periodically, as it may deem
7 appropriate, the amount of the percentage of acquisition/production
8 cost as a minimum mark-up over cost and to modify such percentage by
9 rule of the board, except such percentage shall be not less than ten
10 percent.

NEW

11 (c) No brewery, winery, certificate of approval holder, wine
12 importer, or wine wholesaler may sell or offer to sell any beer or wine
13 to any persons whatsoever in this state until copies of such written
14 contracts or memoranda of such oral agreements are on file with the
15 board.

16 (d) No brewery or winery may sell or offer to sell any package or
17 container of beer or wine to any wholesaler at a price differing from
18 the price for such package or container as shown in the schedule of
19 prices filed by the brewer or domestic winery and then in effect,
20 according to rules adopted by the board.

21 (e) The board may reject any supplier's price filing, contract, or
22 memorandum of oral agreement, or portion thereof that it deems to be in
23 violation of this section or any rule or that would tend to disrupt the
24 orderly sale and distribution of beer or wine. Whenever the board
25 rejects any such price filing, contract, or memorandum, the licensee
26 submitting the price filing, contract, or memorandum may be heard by
27 the board and shall have the burden of showing that the price filing,
28 contract, or memorandum is not in violation of this section or a rule
29 or does not tend to disrupt the orderly sale and distribution of beer
30 or wine. If the price filing, contract, or memorandum is accepted, it
31 shall become effective at a time fixed by the board. If the price
32 filing, contract, or memorandum, or portion thereof, is rejected, the
33 last effective price filing, contract, or memorandum shall remain in
34 effect until such time as an amended price filing, contract, or
35 memorandum is filed and approved, in accordance with the provisions of
36 this section.

37 (f) All prices, contracts, and memoranda filed as required by this
38 section shall at all times be open to inspection to all trade buyers.

- 1 within the state of Washington and shall not in any sense be considered
- 2 confidential.

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